

## **UIPL 01-82 Attachment I**

Section. by Section Explanation and Interpretation of Amendments in P.L. 97-35 and P.L. 97-34 which affect the Unemployment Compensation Program

### **1. Section 2335 - Child Support Intercept of Unemployment Benefits**

Section 2335 of P.L. 97-35 amended Section 454 of the Social Security Act relating to State plans for child support, and Section 303(e) of the Social Security Act (SSA), containing requirements applicable to SESAs, to provide a more effective means of enforcing child support obligations by satisfying such obligations out of unemployment compensation payable to individuals owing such obligations. In general, the provisions applicable to the child support enforcement agencies in Section 454 require that such agencies enforce child support obligations that are not being met through agreements with individuals to have agreed upon amounts due under such obligations withheld from unemployment compensation otherwise payable or absent such an agreement, by bringing legal action to require the withholding of amounts from such compensation payable to individuals with such obligations.

The amendments made by Section 2335 to Section 303(e)(2) require, as a condition for payment of granted funds, that the amounts due for child support obligations as specified in such agreements or required to be withheld pursuant to legal process, shall be deducted by the State employment security agency (SESA) from any unemployment compensation payable and be forwarded to the State or local child support enforcement agency. The administrative cost of providing this service is to be borne by the child support enforcement agency.

Specifically, Section 303(e)(2) as redesignated by Section 2335 of P.L. 97-35 now provides as follows:

(2)(A) The State agency charged with the administration of the State law --

(i) shall require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support obligations (as defined in the last sentence of this subsection, (sic, correct reference is paragraph (1))),

(ii) shall notify the State or local child support enforcement agency enforcing such obligation, if any applicant discloses under clause (i) that he owes child support obligations and he is determined to be eligible for unemployment compensation, that such applicant has been so determined to be eligible,

(iii) shall deduct and withhold from any unemployment compensation otherwise payable to an individual --

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State agency under Section 454(20)(B)(i) of this Act, or

(III) any amount otherwise required to be so deducted and withheld from such unemployment compensation through legal process (as defined in Section 462(e)), and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State or local support enforcement agency.

Any amount deducted and withheld under clause (iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of his child support obligations.

(B) For purposes of this paragraph, the term "unemployment compensation" means any compensation payable under the State law (including amounts payable pursuant to agreements under any Federal unemployment compensation law).

(C) Each State or local child support enforcement agency shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by such State agency under this paragraph which are attributable to child support obligations being enforced by the State or local child support enforcement agency.

#### Effective Dates

The amendments made by Section 2335 of P.L. 97-35 became effective on August 13, 1981, but will not be requirements under Section 303(e)(2), SSA, until October 1, 1982. States may implement this provision after the August 13, 1981, date but must do so as a condition of certification for payment of granted funds beginning on October 1, 1982.

#### Disclosure of Claimant's Child Support Obligations

As provided by clause (i) of Section 303(e)(2)(A), SSA, SESAs must require with respect to each new claim filed that the claimant disclose whether he or she owes "child support obligations." This request for information is required to be made only on new claims and need not be requested on subsequent claims (continued or reopened) filed by an individual. If the individual states that he or she does not owe such obligations, the SESA is not required to take further action unless and until the child support enforcement agency notifies the SESA in accordance with Section 454(20)(B) SSA. It is the responsibility of the State or local child support enforcement agency under Section 454(20)(A), SSA, to determine on a periodic basis whether any individual receiving unemployment compensation owes child support obligations which are enforceable by it.

The term "child support obligations" is defined in the last sentence of Section 303(e)(1), SSA, as including only obligations which are being enforced pursuant to a plan described in Section 454, SSA, which has been approved by the Secretary of Health and Human Services under part D of

Title IV of the Social Security Act. The SESA is not required to take any action with regard to any obligations owed other than those described in the specified provisions.

#### Notification to Child Support Enforcement Agency

If an individual discloses that he or she owes such obligations and the SESA determines that the individual is eligible for unemployment compensation, clause (ii) of Section 303(e)(2)(A) provides that in such a case the SESA must then notify the appropriate State or local child support enforcement agency that the individual is eligible for unemployment compensation. Once notification has been given to the appropriate agency as identified by the claimant, further action by the SESA must await notification from the child support enforcement agency of the amounts to be deducted from unemployment compensation otherwise payable to the claimant as agreed upon by the enforcement agency and the individual owing child support obligations. In this regard, Section 454(20)(B)(i), SSA, specifies that it is the responsibility of the child support enforcement agency to submit a copy of any such agreement to the SESA.

#### Deduction for Child Support Obligations

Under clause (iii) of Section 303(e)(2)(A), SSA, SESAs must deduct and withhold from any unemployment compensation payable to an individual, (1) the amount specified by the individual to the SESA to be deducted and withheld or, (2) the amount determined pursuant to an agreement entered into between the individual and the State or local child support enforcement agency (determined pursuant to Section 454(20)(B)(i), SSA), or (3) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to court order resulting from action taken by the child support enforcement agency through legal process as defined in Section 462(e), SSA (and explained further below). The amount of unemployment compensation subject to being withheld pursuant to clause (iii) is that which remains payable to the individual after application of any recoupment provisions for recovery of overpayments and after deductions which have been made under the State law for deductible income received by the individual. The SESA does not have to determine through any calculations what amount must be deducted to satisfy the individual's child support obligations. It will apply the highest amount specified (1) by the individual, (2) in the agreement, or (3) in legal process, but not exceeding the amount otherwise payable to the individual.

If the individual states that child support obligations are owed but does not specify the amount he wants deducted, the SESA is not required to take any further action other than notifying the child support enforcement agency of the individual's entitlement to unemployment compensation. Benefits otherwise coming due should continue to be paid to the claimant in the interim without deduction for child support obligations. Once the SESA has received notification from the child support enforcement agency, the amount deducted and withheld will be that specified by the child support agency but not in excess of the amount of unemployment compensation otherwise payable for each week. The SESA is not required to take any action to attempt to deduct such amounts from any unemployment compensation already paid to the individual. The SESA is only required to deduct and withhold child support obligations from unemployment compensation payable to the individual after it has been properly notified by the child support

enforcement agency of the amount to be withheld.

Section 303(e)(2)(A)(iii)(III) also requires that the SESA deduct and withhold "any amount otherwise required to be so deducted and withheld from such unemployment compensation through legal process (as defined in Section 462(e))." Legal process as defined under Section 462(e) means "any writ, order, summons, or other similar process in the nature of garnishment which - (1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States, (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law ...." Such writ, order, etc., (2) is directed to, and the purpose of which is to compel a governmental entity which holds monies which are otherwise payable to an individual, to make a payment from such monies to another party in order to satisfy a legal obligation of such individual to provide child support ...."

#### Payment of Amounts Deducted to Child Support Enforcement Agent

Clause (iv) of Section 303(e)(2)(A) requires that the SESA must pay any amount deducted and withheld pursuant to clause (iii) to the appropriate State or local child support enforcement agency. Thus, any amounts specified by the individual, or specified in the agreement entered into by the individual and the child support enforcement agency which the latter has forwarded to the SESA, or any amount required under specific court order as outlined above, must be withheld and forwarded to the child support enforcement agency. The Federal law contains no specific time limitations within which such amounts must be forwarded by the SESA. Therefore, the manner in which such matters will be handled should be worked out to the satisfaction of both SESAs and the child support enforcement agencies.

The last sentence of Section 303(e)(2)(A) provides that any amounts withheld and forwarded by SESAs shall be treated as payment to the individual of unemployment compensation due such individual to the extent of the amount withheld, and further shall be treated in satisfaction of the individual's child support obligations. This eliminates any basis for a claim by the individual against the SESA for any amounts that have been forwarded by the SESA to the child support enforcement agency, but only with respect to those amounts deducted and withheld in accordance with the provisions of Section 303(e)(2), SSA. Such deductions also relieve the individual of his child support obligations but only to the extent of the amounts that are deducted and withheld by the SESA.

As provided under Section 303(e)(2)(B), SSA the unemployment compensation required to be deducted and withheld under this section applies to any regular or extended or additional unemployment compensation payable under State law, and any amounts payable by the SESA pursuant to agreements under any Federal unemployment compensation law. This includes any payments made under the UCX and UCFE programs, trade readjustment allowances payable under the Trade Act of 1974, disaster unemployment assistance payable under Section 407 of the Disaster Relief Act of 1974 and weekly layoff and vacation replacement benefits payable under the Redwood National Park Expansion Act (P.L. 95-250).

## Reimbursement for Administrative Costs

The State or local child support enforcement agency receiving amounts withheld from unemployment compensation and forwarded by the SESA has the responsibility for reimbursing the SESA for the administrative costs it incurs in complying with Section 303(e)(2), SSA. SESAs will have the responsibility of ascertaining the costs involved and for establishing arrangements for obtaining reimbursement of costs incurred in this activity.. Any action taken by the SESA pursuant to Section 303(e)(2) should be undertaken only if satisfactory arrangements for such reimbursement have been made and the amount of such reimbursement will be sufficient to cover all costs associated with or attributable to this activity. No granted funds will be supplied for administration of this provision. SESAs may require reimbursement in advance.

Further information regarding procedures for implementing the above requirements will be developed and forwarded to State agencies at a later date.

Draft legislation, for purposes of implementing the above requirements of Section 303(e)(2), SSA, are included in Attachment II.

## Impact of Waiver Provisions Under State Laws

Since all State laws contain provisions voiding any agreement to waive benefit rights or any assignment of such benefits, States should consider whether it is necessary to amend such provisions to permit proper implementation of the intercept provisions for child support obligations. Amendments for this purpose should be carefully phrased to avoid interpretations allowing any expansion of the exception provided for child support obligations.

## 2. Section 2401 - Elimination of the National Trigger for the Extended Benefit Program

Section 2401 of P.L. 97-35 amended Section 203 of the EUCA by repealing all provisions contained therein that provided for and related to the national trigger. With the elimination of the national trigger, payment of extended benefits will be permitted only in those States where the insured unemployment rates (IUR) meet State requirements to trigger on an extended benefit period. Accordingly, States will now pay extended benefits only when an extended benefit period is triggered "on" by reason of the State indicator.

## Effective Dates

Section 2401(c) of P.L. 97-35 provides that the amendments eliminating the national trigger are effective the week beginning after the date of enactment, August 13, 1981.

Section 2408(b)(1) of P.L. 97-35 provides that amendments to the State law eliminating the national trigger will be required for purposes of certification by the Secretary of Labor under Section 3304(c), FUTA, on October 31, 1981, and thereafter. However, if a State legislature does not meet in a session that begins after the date of enactment, August 13, 1981, and prior to September 1, 1981, or if in session on August 13, 1981 does not remain in session for at least 25

days (i.e., until September 7, 1981) the State will be required to eliminate these provisions in the State law for certification on October 31, 1982 and thereafter. No problem is anticipated in giving effect to these amendments, however, because a national extended benefit period could not trigger on without action by the Secretary of Labor, and by these amendments the Secretary is barred legally from taking any such action after August 13, 1981.

### 3. Section 2402 -- Claims for Extended or Additional Compensation not included in Determining the Rate of Insured Unemployment

Section 2402 of P.L. 97-35 amends Section 203 of the EUCA by eliminating claims for extended benefits and additional compensation from the calculation of the rate of insured unemployment (IUR). This is accomplished in Paragraph (1), Subparagraph (A) of Section 203(e), as redesignated by Section 2401 of P.L. 97-35, by striking out the words "individuals filing claims" and inserting in lieu thereof the words "individuals filing claims for regular compensation".

Historically, the U.S. Department of Labor has included extended benefit claimants in the insured unemployed population used to calculate the State EB trigger rate for the extended benefit program. The EB trigger rate has been calculated by dividing the average weekly number of individuals filing claims (including individuals filing claims for extended benefits) by the average monthly covered employment for the first four of the most recent six completed calendar quarters. As a result of the above cited amendment this calculation will no longer include, claims for extended benefits or additional compensation in the equation.

### Application of Amendment

This amendment became effective for purposes of determining whether there are "on" or "off" indicators for weeks beginning after August 13, 1981. For purposes of making IUR determinations for such weeks, the provision is deemed to be in effect for all weeks whether beginning before, on, or after the date of enactment. Therefore, claims for weeks ending August 22, 1981 and the twelve prior weeks must be adjusted to reflect only regular benefit weeks claimed. The same adjustment applies to corresponding weeks for the prior two years. These calculations must also omit additional compensation claims as defined in Section 205(4), EUCA as well as extended benefit claims, both of which were previously included but must now be excluded for these purposes. The same procedures followed to determine and report the IUR in any State remain in effect and govern the beginning and ending date of any EB period, (i.e. the "lag period" in triggering "off" an EB period remains unchanged).

### Effective Date

Section 2408(b)(1) of P.L. 97-35 provides that this change shall be required to be included in State laws for purposes of certification by the Secretary of Labor on October 31, 1981 and thereafter. However, the effective date for certification purposes may be delayed until October 31, 1982, if (a) the state does not commence a legislative session anytime after August 13, 1981, and prior to September 1, 1981, or (b) the State is in a legislative session on August 13, 1981, but remains in session fewer than 25 days.

States whose laws now provide authority for calculating the State EB trigger rate as specified or are interpreted to require that it be so calculated, need take no further action to satisfy this new requirement. If such authority does not exist or the State law cannot be so interpreted, then appropriate legislative action shall be sought to assure consistency with the Federal law requirements within the time limits specified above. For purposes of federal reimbursement of sharable regular and extended compensation, however, this change is effective for all States after August 13, 1981. Should a State trigger on or remain on when it should be off, there will be no federal sharing of regular or extended benefit costs.

#### 4. Section 2403 -- Change in State Trigger for Extended Benefits

Section 2403 of P.L. 97-35 amended Section 203 of the EUCA by changing the State triggers for beginning and ending extended benefit periods. Under the prior provisions for triggering on an extended benefits period in a State, a State "on" indicator existed when the rate of insured unemployment (IUR) was 4.0 percent for a moving 13-consecutive week period and the rate equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years. As a result of the 1976 amendments made by P.L. 94-566, each State was permitted, at its option, to waive the 120 percent requirement when the IUR in the State equaled or exceeded 5 percent. Section 2403 of P.L. 97-35 amended the EUCA to change both the required 4 percent rate and the optional 5 percent rate.

Specifically, Section 2403 amended Section 203(d)(1) (as redesignated by Section 2401(b)(1) of P.L. 97-35) by changing the 4 percent rate provided in subparagraph (B) to "5" percent and by changing the optional 5 percent rate in Section 203(d) to "6" percent. These amendments are effective for weeks beginning after September 25, 1982. Accordingly, a State must provide under its law for the week beginning after that date and all following weeks that an extended benefit period will begin if the IUR or such week and the immediately preceding 12-week period equaled or exceeded 5 percent and equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years.

With regard to the optional trigger provided by Section 203(d), EUCA, for weeks beginning after September 25, 1982, States may opt to waive the 120 percent factor only when the insured unemployment rate in the State equals at least 6 percent. To trigger "off" however, States that have the optional trigger will have to meet both the required and optional "off" triggers.

#### Effective Date

The amendments to the State trigger apply to all weeks beginning after September 25, 1982, but they may not be made effective for weeks which begin earlier than that date.

Section 2408(b)(1)(B) of P.L. 97-35, provides however that the amendments shall be required to be included in State laws for purposes of certification by the Secretary of Labor under Section 3304(c) FUTA, on October 31, 1982, and thereafter. The effective date for certification purposes may be delayed until October 31, 1983, if (a) the State legislature does not meet in a session

which begins after August 13, 1981, and prior to September 1, 1982, or (b) the State legislature is in a legislative session on August 13, 1981, but does not remain in session at least 25 calendar days. In such a case, the amendments to meet the requirements in Section 203(d) must be effective on or before October 31, 1983. In addition, for any weeks beginning after September 25, 1982, if the State has failed to amend its law to change the EB triggers as specified by Section 2403 of P.L. 97-35, and an extended benefit period is in effect by reason of an EB trigger rate other than as provide under that section, the State will not be entitled to the Federal share of any extended compensation or sharable regular compensation paid during such period irrespective of the delay allowed. In this regard the effective dates for certification purposes have no affect on the State's entitlement to the Federal share of extended and sharable regular compensation payable after September 25, 1982. Further, States may not, consistently with Federal law requirements in Section 3304(a)(11) FUTA, change the State EB triggers prior to September 26, 1982.

#### 5. Section 2404 -- Requirement for 20 Weeks of Full Time Insured Employment or the Equivalent in Insured Wages to Qualify for Extended Benefits

Section 2404 of P.L. 97-35 amended Section 202(a) of the EUCA by redesignating Paragraph (5) as Paragraph (6) and adding a new requirement under Paragraph (5). As amended Section 202(a)(5) now requires as a condition for certification under section 3304(c), FUTA, and for receipt of the Federal share of extended benefits and sharable regular benefits, that claimants must have worked at least 20 weeks in full-time insured employment or the equivalent during the base period, in order to be eligible for extended benefits or sharable regular benefits. As revised, Section 202(a)(5) provides as follows:

"(5) Notwithstanding the provisions of paragraph 2, an individual shall not be eligible for extended compensation unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or 1 1/2 times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest (or one such quarter if his wages were the same for more than one such quarter). The State shall by law provide which one of the foregoing methods of measuring employment and earnings shall be used in that State."

Accordingly, the State law must require that an individual have at least 20 weeks of full time insured employment, or the equivalent in insured wages in the base period of the applicable regular benefit year in order to establish eligibility for extended benefits. The "equivalent" of 20 weeks of work is 40 times the individual's most recent weekly benefit amount or 1 1/2 times the high quarter wage in the base period. This amendment applies to all weeks which begin after September 25, 1982, but it may not be made effective for weeks which begin earlier than that date.



A number of States now have a weeks-of-work requirement with a specified amount of wages in each week or an average weekly earnings amount. Such provisions will satisfy the requirements in Section 202(a)(5) only if the number of weeks of full-time insured employment required under those provisions equals at least 20 weeks: "Full-time insured employment" for purposes of this section means work covered under the State unemployment insurance law. Whether or not such work constitutes full-time insured employment will be determined in accordance with applicable State law. With regard to claims handled under the wage combining plan, (1) any insured employment and wages transferred by a State involved in the base period will constitute insured employment and wages for purposes of this section, and (2) the qualifying requirements in the law of the paying State shall apply, regardless of the requirements in the transferring State.

States which require less than 20 weeks (or its equivalent) of insured employment in the base period to qualify for regular benefits must either change the basic qualifying requirement to require 20 weeks or the equivalent, or make no change in the basic qualifying requirement but require 20 weeks or its equivalent as a condition for the receipt of sharable regular or extended benefits. This approach would, in effect, require a separate monetary determination for sharable regular and extended benefit purposes. For sharable regular benefits the requirement affects only reimbursement of the State unemployment fund. For extended benefits, however, it is also a conformity requirement.

There are several States that "extend" the base period beyond the usual 12-month period under certain circumstances or provide for alternate qualifying requirements when the individual does not meet the normal base period monetary eligibility conditions. These provisions must also meet the 20 week or equivalent conditions within the extended base period specified under the State law. In general, if the State law permits any individual to qualify, under any circumstances, without having had 20 weeks in the base period (or 40 times the weekly benefit amount or 1 1/2 times the high quarter wage), it would not be consistent with Section 202(a)(5), to permit such individuals to establish eligibility for extended benefits or sharable regular benefits.

States that now require 20 weeks of full-time employment or 40 times the weekly benefit amount or 1 1/2 times the high quarter wage in the base period to qualify for regular benefits would meet the conditions in Section 202(a)(5) provided there are no additional conditions specified under the State law which would in certain circumstances allow individuals to qualify with less than the amount of employment specified under the Federal law.

Section 202(a)(5) provides that one of the equivalents of 20 weeks of full time insured employment is covered earnings "which exceed 40 times the individual's most recent weekly benefit amount." (Underlining added) The Conference Report (No. 97-208) on page 994 identified this equivalent as "Wages equal to 40 times the claimant's weekly benefit amount." (Underlining added) Since the term "exceed" is interpreted as applying to any amount however small, and it is apparent that Congress intended equivalencies specified, a State law will be considered to be consistent with Federal requirements if it requires earnings which equal or exceed 40 times the weekly benefit amount. The phrase "most recent weekly benefit amount" means the weekly benefit amount payable (including dependent's allowances) for the week of total unemployment immediately preceding the first week for which extended or sharable regular

benefits are payable.

Most States now require for regular benefit entitlement a distribution of earnings in quarters of the base period. It will continue to be the option of the State whether to require a particular distribution of earnings in quarters of the base period in providing for the 1 1/2 times high quarter or the 40 times weekly benefit amount equivalent.

States with "step-down" provisions, or States that contemplate adoption of such provisions, need to examine them carefully to ensure that the 40 times weekly benefit amount requirement or the 1 1/2 times the higher quarter requirement is met at the step-down level at which the claimant qualifies for benefits. Otherwise such individuals can not establish eligibility for EB and this would have to be provided for in the State law.

#### Effective Date

The 20 week requirement (or its equivalent) is a requirement which must be met for a State to receive the Federal share of sharable regular benefits and extended benefits for weeks which begin after September 25, 1982. In this regard, and also for certification purposes, the effective dates and grace periods allowed are the same as discussed above for the amendments to the State triggers in Section 2403.

Accordingly, determinations would have to be made with respect to each initial claim for extended benefits (or any first claim for sharable regular benefits) filed for any week beginning after September 25, 1982 whether the 20-week requirement is met. Continued claims for sharable regular or extended benefits shall be paid for the first week beginning after September 25, 1982 and thereafter without regard to this new requirement. Claims for the week ending September 25, 1982 and before are not affected by the 20 week requirement.

A State does not have the option to give effect to the 20-week requirement at any earlier date. To do so would conflict with Section 3304(a)(11), FUTA, which provides that "extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970." Since the 20 week requirement is effective with respect to weeks beginning after September 25, 1982, an earlier implementation by a State would provide for payment of extended benefits under conditions not specified by EUCA, and therefore it would be inconsistent with Section 3304(a)(11), FUTA.

Those States that fail to amend their laws to meet the 20-week requirement in weeks beginning after September 25, 1982, will be subject to loss of the Federal share of extended compensation and regular sharable compensation for such weeks and until the law is amended to satisfy the requirements in Section 202(a)(5), EUCA, irrespective of the delay allowed under Section 2408(b)(2)(B) of P.L. 97-35. The delay provided by that section is only for certification purposes and has no effect on Federal reimbursements for EB or sharable regular compensation. Further, for sharable regular benefits the requirement affects only reimbursement of the State unemployment fund. For extended benefits, however, it is also a conformity requirement.

## Prohibition Against Payment of Federal Share of Extended Compensation or Regular Sharable Compensation not Paid in Accordance with Federal Requirements

Section 2404(b)(1) and (2) of P.L. 97-35, also amends redesignated Section 202(a)(6), EUCA, to read as follows:

"(6) no payment shall be made under this Act to any State in respect of any extended compensation or sharable regular compensation paid to any individual for any week if, under the rules of Paragraphs (3) [and], (4) and 5, extended compensation would not have been payable to such individual for such week." (New language underlined, deleted language bracketed.)

This amendment relating to new Section 202(a)(5) applies with respect to extended compensation and sharable regular compensation payable for weeks which begin after September 25, 1982. This means that any State which fails to amend its law to apply the requirements in Section 202(a)(5) EUCA, as of that effective date would lose the Federal share of the cost of extended and sharable regular compensation until such time as the law is amended to meet such requirements.

### 6. Section 2405 -- Eligibility Requirements for Ex-Servicemembers

Section 8521(a)(1)(B) of Title 5 of the United States Code, which establishes the eligibility requirements that must be met by ex-servicemembers for their "Federal service" to qualify them for unemployment compensation, has been amended by Section 2405 of P.L. 97-35 to read as follows:

(B) with respect to that service, the individual--

(i) was discharged or released under honorable conditions;

(ii) did not resign or voluntarily leave the service; and

(iii) was not released or discharged for cause as defined by the Department of Defense."

Under Section 2405(b) the amendment to Section 8521(a)(1)(B) of Title 5, U.S.C., shall apply with respect to terminations of service on or after July 1, 1981, but only in the case of weeks of unemployment beginning after August 13, 1981.

Procedural instructions and interpretations of these amendments are included in UIPL No. 40-81, issued August 19, 1981.

### 7. Section 2406 -- Limitation on Reductions of Credit Against Federal Unemployment Tax for Outstanding Advances to States

Section 3302(c)(2) of FUTA provides for collection of advances made to State unemployment funds, pursuant to Title XII of the Social Security Act, that have been outstanding for specified

periods by means of reducing credits otherwise allowable to a State's employers who are subject to the tax imposed by Section 3301 of FUTA. The tax credit reductions increase the net Federal unemployment tax rates.

Addition of a new Subsection (f) to Section 3302, enacted by Section 2406 of P.L. 97-35, gives States additional time to achieve solvency by limiting the tax credit reduction if the State satisfies certain unemployment fund financing and solvency conditions with respect to taxable (calendar) years 1981 through 1987. Under paragraph (3) the taxable year for which tax credit reduction is limited under subsection (f), will not be counted as a taxable year (and the January 1 thereof) in which there was an outstanding balance of advances for purposes of applying the reduction of credit under Section 3302(c)(2), FUTA for future years.

#### Requirements for Limitation of Tax Credit Reduction

For taxable (calendar) years 1981 through 1987, the reduction of credits under Section 3302(c)(2), FUTA, will not exceed the greater of 0.6 percent of wages subject to the Federal unemployment tax or the percentage reduction that was in effect for the State for the preceding taxable year if the Secretary of Labor determines on or before November 10 of such taxable year that no action was taken by the State during the 12-month period ending on September 30 of such taxable year (other than action required under a State law that was in effect before the date of enactment of subsection (f), i.e., August 13, 1981, which has resulted or will result in:

(A) a reduction in the State's unemployment tax effort (as defined by the Secretary of Labor in regulations); or

(B) a net decrease in solvency of the State unemployment compensation system (as defined by the Secretary of Labor in regulations);

and the Secretary determines that:

(C) the State "unemployment tax rate" as defined below, for the taxable (calendar) year equals or exceeds the average benefit-cost ratio, as defined below, for calendar years in the 5-calendar year period ending with the calendar year immediately preceding the taxable year in question; and

(D) the outstanding balance of advances to the State on September 30 of the taxable (calendar) year was not greater than the outstanding balance of such advances for such State on September 30 of the third preceding taxable year (or, for purposes of taxable year 1983, on September 30, 1981).

The requirements in subparagraphs (C) and (D) do not apply to taxable years 1981 and 1982.

For taxable year 1983, Paragraph (4)(B)(i) of Subsection (f) provides that any additional tax paid by a State's employers by reason of tax credit reduction pursuant to Section 3302(c)(2), FUTA, will be treated by the State as contributions paid into the State unemployment fund for the same

taxable (calendar) year, thereby being included in computations of unemployment tax rates but only for the purposes of Subsection (f).

For taxable year 1984, Paragraph (4)(B)(ii) of Subsection (f) provides that only the additional tax paid by a State's employers pursuant to Section 3302(c)(2), FUTA, in excess of 0.6 percent will be treated as contributions paid into the State unemployment fund for that year; but only for the purposes of Subsection (f).

#### Unemployment Tax Rate

For purposes of subparagraph (C) above, the State "unemployment tax rate" for any taxable year is the percentage obtained by dividing the total amount of contributions paid into the State unemployment fund with respect to such taxable year, by total remuneration paid by, employers who are subject to contributions under such State's law with respect to such taxable year (determined without regard to any wage base limitation for contribution purposes).

#### Benefit-cost Ratio

For purposes of subparagraph (C) above also, the benefit-cost ratio for any calendar year is the percentage obtained by dividing the total sum of benefits paid (regular, additional, and extended) under the State law during a calendar year and any interest paid during such calendar year on advances, pursuant to Section 1202(b) of the Social Security Act, total remuneration paid by employers who are subject to contributions under the State law with respect to such calendar year (determined without regard to any wage base limitation). Any computation, (if not an exact multiple of 0.1 percent), will be reduced to the nearest multiple of 0.1 percent.

In determining the benefit-cost ratio for any year, any benefit costs subject to the reimbursement method of financing and any benefits paid for which the State is entitled to reimbursement under any Federal law shall not be included in the computation of the ratio.

For purposes of determining the benefit-cost ratio with respect to taxable (calendar) years 1983 and 1984, only regular benefits, that is, other than additional and extended benefits, will be taken into account in computing the benefit-cost ratios of preceding calendar years before 1982 and 1981, respectively.

More detailed explanations of the new requirements will be issued in the near future.

#### 8. Section 2407 -- Interest on Outstanding Loans to States

Advances to States pursuant to Title XII of the Social Security Act made of or after April, 1982, and before January 1, 1988, will be subject to interest unless certain conditions are met. Advances made before April 1, 1982, will remain interest-free. An "advance" for this purpose is the transfer to a State unemployment fund of an amount of money from the Federal unemployment account.

Section 2407 of P.L. 97-35 amended Section 1202 of the Social Security Act by redesignating Section 1202 as 1202(a) and by adding a new subsection (b) which provides for assessment of interest on any advance made to a State during the period specified above, except, as provided in paragraph (2) thereof, for an advance that is repaid in full before October 1 of the calendar year in which the advance was made, provided no other advance is made to that State during the same calendar year and after the date on which the repayment of the earlier advance was completed.

#### Interest Due Dates

Normally, as provided in Paragraph (3)(A), interest when payable would be due and payable no later than October 1 following the Federal fiscal year (October 1 to the following September 30 in which the advance was made.) If, however, interest becomes payable on the amount repaid in full before October 1, by reason of a later advance during the same calendar year, the interest on such repaid advance for the period it was outstanding is to be paid not later than the day after the date of the later advance. For example, if the later advance was made on October 25, the interest on the repaid amount is due on October 26.

Notwithstanding the due dates for payment of interest specified above, subparagraph (B) of Paragraph (3) provides that the due date for interest payable on an advance made during the months of May, June, July, August, or September, (that is, the last five months of the Federal fiscal year), will be no later than the last day of the next calendar year, (that is, December 31 of the calendar year following the year in which the advance was made). A State may, at its option, pay the interest on such an advance earlier than the due date. In any case, interest will accrue on the deferred interest in the same manner as though it were an advance made on the day when payment of the interest would have been due but for its deferral.

#### Interest Rate

The interest rate for a calendar year, as provided in paragraph (4), is the lower of 10 percent or the rate paid by the Secretary of the Treasury in the last quarter of the immediately preceding calendar year on State balances in the Unemployment Trust Fund.

#### Prohibition of Payment of Interest from Unemployment Fund

Interest payable is to be paid to the Secretary of the Treasury. Paragraph (5) prohibits payment of interest that is required under subsection (b) from a State's unemployment fund, directly or indirectly, such as by an equivalent reduction in contributions or contribution-related rates, by increasing the types or amounts of noncharging, or by altering factors in the computation of contributions or contribution-related rates to accommodate, in whole or in part, the payment of interest. If the Secretary of Labor finds, after reasonable notice and opportunity for a hearing to the State agency, that any State action results in the payment of required interest, directly or indirectly, from the State's unemployment fund, he is required to withhold certification of the State under Section 3304(c), FUTA, for the 12-month period in which such State action occurred. Such withholding of certification also would result in withholding of certification of the State law under Section 3303(b), FUTA, and the withholding of certification of grants under

Title III of the Social Security Act and the Wagner-Peyser Act, and would have other effects.

### Order of Application of Repayments of Advances

Paragraph (6) provides that a voluntary repayment of an advance, such as repayment made by transfer of money from the State's unemployment fund to the Federal unemployment account, as provided in subsection (a) of Section 1202, will be applied on a last made first repaid (LIFO) basis so that a State may avoid interest liability as provided in paragraph (2) of subsection (b). Any other repayment, such as by reduction of tax credits as provided in Section 3302(c)(2), FUTA, will be applied on a first made first repaid (FIFO) basis.

### Failure to Pay Required Interest

If a State does not pay required interest on the due date, interest will continue to accrue at the same rate until paid in full. In the meantime, alternative methods of collection may be utilized.

### 9. Section 2505 - Limitation on Weeks of Combined Extended Benefits and Trade Readjustment Allowances

Section 2505 of P.L. 97-35 amended Section 233 of the Trade Act of 1974 and Section 204(a)(2) of the EUCA so as to limit the individual's combined unemployment compensation and trade adjustment allowances (TRA) to a maximum of 52 weeks. This was accomplished by amendments to Section 233(a) of the Trade Act of 1974 which restricted the maximum amount of TRA payable for the period covered by any certification to an adversely affected worker to an amount equal to 52 times the TRA payable to the worker for a week of total unemployment. This amount is to be "reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in Section 231(a)(3)(A) ".

In addition, Section 233(d) of the amended Trade Act also provides for limiting an individual's entitlement to extended benefits payable after TRA entitlement is established, by reducing any benefit entitlement remaining at the end of the individual's benefit year by the number of weeks of TRA, the individual collected during such benefit year. Specifically, Section 233(d) provides that:

"(d) Notwithstanding any other provision of this Act or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this part. For purposes of this paragraph, the terms 'benefit year' and 'extended benefit period' shall have the same respective meanings given to them in the Federal State Extended Unemployment Compensation Act of 1970."

In order to provide for implementation of the above cited requirements, Section 2505(b) of P.L. 97-35 also amended Section 204(a)(2) of the FUCA to require as a condition for certification by the Secretary of Labor and for receipt of payment of the Federal share of extended benefits that:

"(2) No payment shall be made to any State under this subsection in respect to compensation (A) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, [or] (B) paid for the first week in an individual's eligibility period for which extended compensation or sharable regular compensation is paid, if the State law of such State provides for payment (at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable unemployment, or (C) paid for any week with respect to which such benefits are not payable by reason of Section 233(d) of the Trade Act of 1974." (Changes to prior law indicated by brackets showing deletions and underscoring showing additions.)

#### Effective Dates

The amendments made by Section 2505 apply with respect to TRA payable for weeks of unemployment which begin after September 30, 1981. However, Section 2514(a)(2)(D)(i) of P.L. 97-35 provides that the provisions of Section 233(d) of the Trade Act of 1974 and the provisions of Section 204(a)(2)(C) of EUCA shall apply to State unemployment compensation laws for purposes of certification under Section 3304(c) of FUTA on October 31, 1982. In addition, clause (ii) of Section 2514(a)(2)(D), provides that in the case of any State whose legislature does not meet in a session which begins after August 13, 1981 and prior to September 1, 1982, and if in session on August 13, 1981, the legislature does not remain in session for a period of at least 25 calendar days (i.e. until September 7, 1981), then under such circumstances, the amendments to the State law to satisfy these requirements must be made effective on or before October 31, 1983. Although the Section 233(d) change may be adopted by a State at any time after October 31, 1981, (when the 1982 certification period begins), there is no requirement that the change be made effective at any specific time in the certification period. Accordingly, any State which fails to implement the provisions of Section 233(d) effective on or before October 31, 1982 (or 1983, as the case may be) will be subject both to loss of the Federal share of any extended benefits paid contrary to these requirements, and conformity proceedings on issues of conformity with the requirements of Section 3304(a)(11), FUTA.

#### Required Deductions for Payments of TRA

The reduction from extended benefits required under Section 233(d) for any payments of TRA received by the individual is specifically limited by statute to extended benefits and to cases where the individual's benefit year ends within an extended benefit period. If at that point the agency finds that the individual received TRA payments during his benefit year, it will be required to reduce any remaining balance of extended benefits that the individual is entitled to receive for weeks beginning after the benefit year ends, by an amount which is the product of the number of weeks with respect to which the individual was entitled to a payment (partial or total) of TRA during such benefit year, multiplied by the individual's extended weekly benefit amount. The reduction is not to be below zero. If the individual exhausts both regular benefits and



extended benefits before his benefit year ends, Section 233(d) will not be applicable. The terms "extended benefit period" and "benefit year" as used for purposes of Section 233(d) of the Trade Act have the meaning given those terms under Sections 203 and 205(5) respectively, of the EUCA.

For purposes of conformity with these new Federal requirements, State laws should be amended as soon as possible to implement the new requirements. Draft language to assist State agencies in preparing an appropriate amendment to the EB requirements of the State unemployment Compensation laws is included in Attachment II.

Additional information concerning the impact of these amendments and procedural instructions for implementing the requirements of Section 2505 of P.L. 97-35 will be issued shortly. Draft language for State laws is included in Attachment II.

#### 10. Section 2506 -- Prohibition Against Disqualification of Individuals Taking Approved Training Under TRA

Under current provisions of State laws enacted to meet the requirements of Section 3304(a)(8) of FUTA, an individual attending a training course that has been approved by the SESA cannot be denied unemployment benefits while in such training or because of the application of provisions relating to availability for work, active search for work or refusal to accept work. A new prohibition against denial of unemployment benefits to individuals in training has now been included in Section 2506 of P.L. 97-35. That section amended Section 236(a) of the Trade Act of 1974 by adding the following new paragraph (2):

"(2) A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter because the individual is in training approved under paragraph (1), because of leaving work which is not suitable employment to enter such training or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work..."

"(3) For purposes of this subsection the term 'suitable employment' means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage."

#### Effective Dates

Section 2514(a)(2)(D)(i) of P.L. 97-35 specifically provides that Section 236(a)(2) of the Trade Act of 1974 "shall apply to State unemployment compensation laws for purposes of certifications under Section 3304(c) of the Internal Revenue Code of 1954 on October 31 of any taxable year after 1981." Under clause (ii) of Section 2514(a)(2)(D) if the State legislature does not meet in a session which begins after the date of enactment (August 13, 1981) and prior to September 1, 1982, and if in session on August 13, 1981 it does not remain in session for at least 25 calendar

days, (i.e., until September 7, 1981) then the requirements of Section 236(a)(2) must be met for purposes of the certification on October 31, 1983. Accordingly, any state which fails to implement the requirements of Section 236(a)(2) of the Trade Act effective on or before October 31, 1982, (or 1983, as the case may be), will be subject to conformity proceedings on issues of conformity with the requirements of Section 236(a)(2).

#### Training Approved Under Section 236(a)(2) of the Trade Act of 1974

The training referred to in Section 236(a)(2) of the Trade Act is that which has been approved for the individual pursuant to Section 236(a)(1). Under that section the Secretary of Labor is authorized to approve training if it is determined that (1) there is no suitable employment (which may include technical and professional employment) available for a worker, (2) the worker would benefit from appropriate training, (3) there is a reasonable expectation of employment following completion of such training, (4) training approved by the Secretary is available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in Section 195(2) of the Vocational Education Act of 1963, and employers), and (5) the worker is qualified to undertake and complete such training.

Under the terms of the agreement entered into by the States and the Secretary of Labor pursuant to Section 239 of the Trade Act of 1974 as amended, the State agencies will have the responsibility for determining what training will be approved for any individual by applying the specified criteria.

#### Prohibition against Denial of Unemployment Compensation Because Individual is Taking Approved Training Under Trade Act

As is the case under Section 3304(a)(8), FUTA, Section 236(a)(2) of the Trade Act provides that individuals attending training approved for them under Section 236(a)(1) of that Act, may not be determined ineligible or disqualified for either unemployment insurance or trade readjustment allowances because they are taking such training, or because of the application to any week of training of State law or Federal law provisions relating to availability for work, active search for work, or refusal to accept work. In addition, Section 236(a)(2) prohibits the denial of such benefits or allowances because the individual left work which is not "suitable employment" to enter such training. For this purpose the term "suitable employment" is defined under Section 236(a)(3) of the Trade Act to mean "with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage." If work left by the individual to enter training does not qualify as suitable employment as so defined, an individual may not be disqualified or determined ineligible under State law for leaving such work to enter approved training. If the work left does satisfy these conditions, the prohibition against a denial would not apply, and the individual would be subject to the applicable State law provisions pertaining to a determination of the individual's eligibility for benefits in these circumstances.

The requirements of Section 236(a)(2) of the Trade Act, as explained above, are applicable to claims for regular benefits as well as extended benefits.

11. Section 822 of the Economic Recovery Tax Act of 1981 -- Exclusion of Certain Fishing Boat Services from Federal Unemployment Tax Act (FUTA).

Section 822 of P.L. 97-34, the Economic Recovery Tax Act of 1981, approved August 13, 1981, permits the exclusion from coverage under the Federal Unemployment Tax Act (FUTA), for calendar year 1981 only, "...service described in Section 3121(b)(20) of the Internal Revenue Code of 1954. This amendment is accomplished in the Federal law by adding, under the definitions of "Employment" as specified in Section 3306(c) of FUTA, a new Paragraph (18) and redesignating the current (18) as (19). New paragraph (18) reads as follows:

"(18) service described in Section 3121(b)(20); or"

Section 3121(b)(20) of the Federal Insurance Contributions Act (FICA) referred to in revised Section 3306(c)(18), FUTA, excludes from "employment" covered by the FICA:

"(20) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which -

"(A) such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),

"(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

"(C) the amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life, "but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals."

This amendment is effective with respect to remuneration paid during calendar year 1981. It will have no application beyond that one-year period.

This change in FUTA status for certain fishing boat service adds to the exclusions from FUTA coverage (for the limited period) those services already excluded from FICA under Section 3121(b)(20) of the Internal Revenue Code of 1954. The Internal Revenue Service will have the responsibility for interpreting and applying this provision.

Although this is not a Federal law requirement for conformity, States that want to amend their laws to coincide with this change in FUTA, should seek an appropriate amendment at any legislative session scheduled this year in view of the effective date of the amendment and the limited application it has for calendar year 1981.